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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,787	09/15/2003	Russell R. Hein	067305.000005	9525

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EXAMINER

LE, MARK T

ART UNIT PAPER NUMBER

3617

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,787

Applicant(s)

HEIN ET AL.

Examiner

Mark T. Le

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-19 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-11, 20, 22 and 24-29 is/are rejected.
- 7) ☒ Claim(s) 3, 21, 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/15/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. In claim 21, "wedge block" is believed to be --wedge brace--. Proper correction or explanation is required.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 4-6, 8-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elfborg (US 1,225,421) in view of Tuningley (US 5,797,565).

Elfborg discloses a railway crossing similar to that recited in the instant claims, including, as shown in Figures 1 and 3 of Elfborg, a pair of horizontal beams as continuous long beams and a pair of vertical beams as divided beams.

Regarding the instant claimed mounting plate and fasteners for mounting the beams to the plate, consider fastening means 58 and mounting plate 50 of Tuningley. In view of Tuningley, it would have been obvious to one skilled in the art to provide a mounting plate along with fasteners, similar to that taught by Tuningley, in the structure of Elfborg for mounting the railway crossing thereof.

4. Claims 1 and 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kopp (US 1,743,924) in view of Elfborg (US 1,225,421).

Kopp discloses a railway crossing similar to that recited in the instant claims, including rail beams mounted on plate 17 by fastening means 18.

Elfborg discloses a railway crossing similar to that recited in the instant claims, including, as shown in Figures 1 and 3 of Elfborg, a pair of horizontal beams as continuous long beams and a pair of vertical beams as divided beams.

In view of Elfborg, it would have been obvious to one skilled in the art to form the railway crossing beams of Kopp with a pair of continuous beams and a pair of discontinuous beams, in a manner similar to that by Elfborg, so as to achieve expected advantages thereof, i.e. greater flexibility in servicing and replacements of the rail crossing components.

Regarding the instant claimed inner segments being shorter than that of the outer segments, consider shorter inner segments 5a and 6a of Kopp.

5. Claims 1, 4-6, 8-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuningley (US 5,797,565) in view of Elfborg (US 1,225,421).

Tuningley discloses a railway crossing similar to that recited in the instant claims, including rail beams mounted on plate 50 by fastening means 58.

Elfborg discloses a railway crossing similar to that recited in the instant claims, including, as shown in Figures 1 and 3 of Elfborg, a pair of horizontal beams as continuous long beams and a pair of vertical beams as divided beams.

In view of Elfborg, it would have been obvious to one skilled in the art to form the railway crossing beams of Tuningley with a pair of continuous beams and a pair of discontinuous beams in a manner similar to that by Elfborg so as to achieve expected advantages thereof, i.e. greater flexibility in servicing and replacements of the rail crossing components.

6. Claims 2, 10, 20, 22, 24-26 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuningley and Elfborg as applied to claim 1 above, and further in view of Remington (US 6,308,897).

Regarding the mounting plate being provided with a pocket for accommodating a rail beam, consider pocket 26 of Remington. In view of Remington, it would have been obvious to one skilled in the art to provide rail beam receiving pocket in the mounting plate of Tuningley, in a manner similar to that taught by Remington, so as to enhance the securement for the rail beam mounted thereon.

Regarding the instant claimed rail brace assembly, consider the rail brace assembly of Remington, including wedge brace 160, clip 208, and wedge 70. In view of Remington, it would have been obvious to one skilled in the art to substitute a rail brace

Art Unit: 3617

assembly, similar to that taught by Remington, for the fastening means of Tuningley so as to achieve the expected advantages of Remington's structure.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 26 above, and further in view of Kopp (US 1,743,924).

Regarding the instant claimed inner segments being shorter than that of the outer segments, consider shorter inner segments 5a and 6a of Kopp. In view of Kopp, it would have been obvious to one skilled in the art to form the inner and outer segments of Tuningley, in relative lengths as taught by Kopp, so as to enhance the structural integrity of the railroad crossing assembly.

8. Claims 12-19 are allowable.

9. Claims 3, 21 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should further consider the structures of Brown, Strickland, Asselin, Farrell, Jones, Moxham, and Elliot.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 703-308-3663. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
8/2/04